

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS: Briarwood Capital, LLC	DEFENDANTS: Lennar Corporation; Lennar Homes of California, Inc. NOMINAL DEFENDANTS: Nicolas Marsch III; Barry Minkow; and Fraud Discovery Institute, Inc.	
ATTORNEYS (Firm Name, Address, and Telephone No.) Mintz Levin Cohn Ferris Glovsky and Popeo P.C. c/o Jeffry A. Davis 3580 Carmel Mountain Road, Suite 300 San Diego, CA 92130 858-314-1500	ATTORNEYS (If Known) O'Melveny & Myers LLP c/o Ben Logan 400 South Hope Street Los Angeles, CA 90071 Attorneys for Lennar Corporation and Lennar Homes of California, Inc. b/r Law Group, LLP c/o Michelle B. Baker Northern Trust Building 4370 La Jolla Village Drive, Suite 670 San Diego, CA 92122 Attorneys for Barry Minkow and Fraud Discovery Institute, Inc.	
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Declaratory and injunctive relief regarding a stay of litigation against the debtor (11 U.S.C. §§ 105, 362; 28 U.S.C. § 1334).		

B104 (FORM 104) (08/07)**NATURE OF SUIT**

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property

- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien

- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property

- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge

- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation

- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability

- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)

- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief

- ☐ 71-Injunctive relief – imposition of stay
- ☒ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest

- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment

- ☒ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action

- ☐ 01-Determination of removed claim or cause

Other

- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et seq*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law☐ Check if this is asserted to be a class action under FRCP 23☐ Check if a jury trial is demanded in complaint

Demand \$ 0.00

Other Relief Sought

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Briarwood Capital, LLC		BANKRUPTCY CASE NO. 10-02677-PB11
DISTRICT IN WHICH CASE IS PENDING Southern District of California	DIVISION OFFICE	NAME OF JUDGE Peter W. Bowie
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Jeffry A. Davis		
DATE February 28, 2010	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Jeffry A. Davis Attorney for Plaintiff	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

Jeffrey A. Davis (SBN 103299)
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Proposed Attorneys for
Briarwood Capital, LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re
BRIARWOOD CAPITAL, LLC, a
Delaware limited liability company,
Debtor.

Case No. 10-02677-PB11

Adv. Proc. No. _____

**COMPLAINT FOR (1) DECLARATORY
RELIEF; AND (2) INJUNCTIVE RELIEF**

BRIARWOOD CAPITAL, LLC,
Plaintiff,

v.

LENNAR CORPORATION, a Delaware
Corporation, and LENNAR HOMES OF
CALIFORNIA, INC., a California
Corporation,

Defendants,

and

NICOLAS MARSCH III, an individual,
BARRY MINKOW, an individual, and
FRAUD DISCOVERY INSTITUTE, INC.,
a California Corporation,

Nominal Defendants.

1 Plaintiff Briarwood Capital, LLC alleges as follows:

2 **JURISDICTION AND VENUE**

3 1. On or about February 23, 2010 (the "Petition Date"), Briarwood Capital, LLC
4 ("Briarwood" or the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of
5 the United States Code (the "Bankruptcy Code") in this United States Bankruptcy Court for the
6 Southern District of California (the "Bankruptcy Court").

7 2. This Court has exclusive jurisdiction over this proceeding pursuant to 11 U.S.C. §
8 362 and 28 U.S.C. §§ 157 and 1334.

9 3. This matter constitutes a core proceeding pursuant to 11 U.S.C. §§ 105 and 362,
10 and 28 U.S.C. §§ 157(b)(2)(A), (O), and 1338.

11 4. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

12 **THE PARTIES**

13 5. Plaintiff Briarwood is a Delaware limited liability company, with its principal
14 place of business in California, and is the debtor and debtor in possession in the chapter 11 case
15 entitled *In re Briarwood Capital, LLC*, Case No. 10-02677-PB11 (the "Bankruptcy Case").
16 Briarwood is primarily engaged in the business of real estate development, including the
17 development of master planned communities. Briarwood is wholly owned by nominal defendant
18 Nicholas Marsch III.

19 6. Plaintiff is informed and believes and thereon alleges that defendant Lennar
20 Corporation ("Lennar Corp") is Delaware Corporation and at all times relevant herein, was doing
21 business nationwide, including in California. Lennar Corp and its various corporate affiliates and
22 ventures are hereinafter sometimes referred to as "Lennar."

23 7. Plaintiff is informed and believes and thereon alleges that defendant Lennar
24 Homes of California, Inc. ("Lennar Homes") is a California corporation, doing business in
25 California, and at all times relevant herein was qualified to do business in California and an
26 affiliate of Lennar Corp.

27 8. Nominal defendant Nicolas Marsch III ("Marsch") is a San Diego resident.
28 Marsch is the sole member and manager of the Debtor. Marsch is also the debtor and debtor in

1 possession in that certain chapter 11 case entitled *In re Nicolas Marsch III*, Case No. 10-02939-
 2 PB11 (the “Marsch Case”), pending in the United States Bankruptcy Court for the Southern
 3 District of California.

4 9. Plaintiff is informed and believes and thereon alleges that nominal defendant Barry
 5 Minkow (“Minkow”) is a San Diego resident.

6 10. Plaintiff is informed and believes and thereon alleges that nominal defendant
 7 Fraud Discovery Institute, Inc. (“FDI”) is a California corporation with its principal place of
 8 business in San Diego, California.

9 **GENERAL ALLEGATIONS**

10 **I. General Background**

11 11. In or about August 1997, Marsch and Lennar San Jose Holdings, Inc. (“LSJH”), an
 12 affiliate of Lennar Corp, formed HCC Investors, LLC (“HCC”) as a Delaware limited company
 13 for the purpose of holding title to, and further developing, a 540-acre parcel located in Rancho
 14 Santa Fe, San Diego County, California, and commonly known as “The Bridges.”

15 12. At the time of HCC’s formation, Marsch and LSJH were the sole members of
 16 HCC and held separate 50% interests in HCC. The LSJH interest in HCC has since been
 17 repeatedly assigned to various other entities affiliated with Lennar, including Lennar Land
 18 Partners II (“LLP II”) and LLP II HCC Holdings, LLC (“HCC Holdings”). Marsch has also
 19 transferred his original interest in HCC. On or about May 13, 1998, Marsch assigned his 50%
 20 interest in HCC to Briarwood.

21 13. At all times, pursuant to the terms of the parties’ agreements, Lennar and its
 22 affiliates, including Lennar Homes, have served as the Manager and Project Manager of HCC.

23 14. The Bridges property was purchased by HCC in February 1998 for \$52 million.
 24 The purchase was made possible due to Marsch’s years of dedication to his vision of an exclusive
 25 residential community and country club at the property. In fact, Marsch had first obtained title to
 26 the property more than 20 years ago.

27 15. Since its acquisition, The Bridges property has been developed into an exclusive
 28 residential community and private country club which Lennar has described as an “extraordinary

1 community” surrounding “one of America’s great private golf clubs.” The homes have won
2 major design awards including the Grand Award, Best Single Family Detached Home, and
3 Residential Detached Project of the Year at the 2004 Gold Nugget Awards, as well as the
4 Building Industry Association of San Diego’s award for Best Detached Housing Product
5 \$1,500,001 and over.

6 16. The private golf course at The Bridges, designed by the Robert Trent Jones II
7 Group, has been equally successful. In 2003, 2004 and 2005, The Bridges hosted the “Battle at
8 the Bridges,” a nationally televised, prestigious best-ball team match featuring players such as
9 Tiger Woods, John Daly, and Phil Mickelson.

10 17. The tremendous market success of The Bridges created a unique opportunity for
11 Briarwood and Lennar’s affiliates to capitalize on the goodwill developed by the market success
12 of The Bridges project by working together on other potential master-planned communities in the
13 Rancho Santa Fe area. Briarwood and Lennar therefore jointly acquired, through an entity known
14 as Lennar Bridges, LLC (“Lennar Bridges”), an adjacent parcel of approximately 80 net acres,
15 initially known as Santa Fe Creek, which was ultimately incorporated into The Bridges
16 development. Briarwood and Lennar developed the Santa Fe Creek site into 40 building sites,
17 including 32 examples of the award-winning Cortile Collection of homes with finished prices of
18 approximately \$3 million per home.

19 18. In addition, the parties pursued another nearby property, commonly known as
20 McCrink Ranch, which consisted of approximately 542 developable acres. The McCrink family
21 had controlled the property for approximately 30 years and had worked to obtain government
22 entitlements in order to allow the McCrink Ranch property to be developed into a high-end
23 master-planned residential community.

24 19. Commencing before 1998, Marsch had begun to actively pursue the acquisition of
25 the McCrink Ranch property. Briarwood and Marsch recognized the McCrink Ranch project
26 could benefit from the “halo effect” of the market success of The Bridges if it could be marketed
27 as being “brought to you by the builders of The Bridges.” For this reason and others, including
28 strong feelings of trust and loyalty established during The Bridges development process,

1 Briarwood determined to invite Lennar to jointly pursue the McCrink Ranch development
2 opportunity in partnership with Briarwood. Lennar thereafter agreed to pursue the McCrink
3 Ranch real estate development opportunity jointly with Briarwood.

4 20. From 1998 through early 2006, Briarwood expended considerable services,
5 including time, effort and funds, in furtherance of the parties' anticipated purchase of McCrink
6 Ranch. Notwithstanding these efforts, Lennar's longstanding fiduciary relationship with
7 Briarwood, and the express agreement to jointly pursue the property with Briarwood, Lennar
8 ultimately joined with another entity, Quadrant Investment Group, LLC, to squeeze out
9 Briarwood and usurp from it the McCrink Ranch opportunity.

10 21. Meanwhile, despite the widely-recognized accomplishment of The Bridges,
11 Lennar was reporting a substantial negative net cash flow in project accountings, allegedly due to
12 increased project costs, all of which are controlled by Lennar. In fact, an accounting provided by
13 Lennar in late 2007 (after Briarwood had filed suit, as described below) demonstrated continued
14 unjustifiable increases in costs and consequent reductions to net cash flow. The result is that
15 Lennar projects zero profits to Briarwood for its 50% membership interest and substantial
16 contributions to HCC, despite over \$500 million in revenues.

17 **II. The Lennar Litigation**

18 22. As a result of Lennar's actions with respect to The Bridges and McCrink Ranch, in
19 late 2006, Briarwood instituted two lawsuits against Lennar in San Diego Superior Court.
20 Initially, on November 13, 2006, Briarwood filed *Briarwood Capital, LLC v. Lennar Homes of*
21 *California, Inc., et al.*, Case No. GIC 875457 (the "McCrink Ranch Action"), for the purpose of
22 recovering losses associated with Lennar's usurpation of the McCrink Ranch opportunity. On
23 December 22, 2006, Briarwood filed *Briarwood Capital, LLC v. Lennar Land Partners II, et al.*,
24 Case No. GIC 877446 (the "Bridges Action"), to recover damages caused by Lennar's
25 mismanagement (or worse) of The Bridges development.

26 23. Briarwood's filing of the McCrink Ranch Action and the Bridges Action spawned
27 additional litigation between the parties. Specifically, Lennar filed *Lennar Homes of California,*
28 *Inc. v. DLA Piper US LLP, et al.*, Case No. 37-2008-00076811, on January 28, 2008, and *Lennar*

1 *Homes of California, Inc. v. DLA Piper US LLP, et al.*, Case No. 37-2008-00092842, on
2 September 30, 2008 against Marsch, individually, and Lennar's former counsel, Brian Foster at
3 DLA Piper US LLP. In those actions, Lennar alleges that, with respect to The Bridges and
4 McCrink Ranch, Marsch improperly interfered with Lennar's relationship with Mr. Foster, and
5 aided and abetted that counsel's breach of duty to Lennar.

6 24. In addition, Lennar initiated a Florida lawsuit relating to these same facts. In
7 *Lennar v. Briarwood Capital, LLC and Nicolas Marsch, III*, Case No. 08-55741 CA 10 (the
8 "Florida Action"), filed in the Circuit Court of the 11th Judicial Circuit In and For Miami-Dade
9 County, Florida (the "Florida State Court"), Lennar alleges "defamatory statements, extortionate
10 conduct, and unlawful acts" in connection with the Bridges and McCrink residential communities
11 and intentional interference with Lennar's business. Plaintiff is informed and believes and
12 thereon alleges that the claims asserted in the Florida Action have no merit, and that the case was
13 filed by Lennar for the sole purpose of increasing the litigation burden on Briarwood and Marsch
14 and gaining leverage in the McCrink Action, the Bridges Action and the related litigation.¹

15 25. The five lawsuits discussed in the above paragraphs are hereafter collectively
16 referred to as the "Lennar Litigation."

17 26. Plaintiff is informed and believes and thereon alleges that after the Lennar
18 Litigation was commenced, Lennar took actions purposefully designed to deprive Briarwood and
19 Marsch of the capital necessary to fund both the Lennar Litigation and those parties' other
20 development opportunities. Specifically, pursuant to Section 6.05 of the HCC Operating
21 Agreement, Briarwood is to receive certain fees from HCC, which are in addition to any net cash
22 flow otherwise owed. These fees include: (1) an annual management fee of \$250,000 and an
23 annual overhead fee of \$60,000, both subject to a cost of living adjustment; (2) an override fee of
24 3.5% of gross sales of all products within the project; and (3) one-half of the resale transfer fee
25 payable to HCC upon resale of properties located within the project.

26 27. These fees described above are accorded a protected status under the HCC

27 ¹ The Florida Action has been removed to the United States District Court for the Southern District of Florida,
28 Miami Division (the "Florida Federal Court"), Case No. 10-cv-20574, pursuant to a Notice of Removal filed by the
Debtor on February 24, 2010 under 28 U.S.C. § 1452.

1 Operating Agreement. For instance, the HCC Operating Agreement provides that the override fee
2 “shall not be subject to offsets, deductions, or adjustments of any kind.” In fact, Marsch
3 specifically negotiated the HCC Operating Agreement with Lennar and obtained such protective
4 provisions for the specific purpose of ensuring that he would receive the payments due him
5 *regardless* of any other circumstance.

6 28. For over nine years, Lennar honored its obligation to cause HCC to make these
7 payments. At all times since June 2008, however, Lennar has caused HCC to withhold these
8 payments from Briarwood, which to date total approximately \$3 million with accrued interest --
9 yet another litigation tactic designed to increase the financial burden on Marsch and Briarwood in
10 the hopes they would capitulate in the Lennar Litigation. Lennar has not provided any
11 justification for its refusal to provide Briarwood with the monies it is owed under the HCC
12 Operating Agreement. In fact, HCC has issued Form K1s to Briarwood demonstrating that these
13 funds have been “distributed,” but continues to hold the funds as restricted cash.

14 29. The trial in the Bridges Action, which case has been pending for over three years,
15 commenced on June 22, 2009 after Lennar’s extensive and unduly expensive pre-trial
16 machinations designed to drive Briarwood and Marsch into submission. Plaintiff is informed and
17 believes and thereon alleges that Lennar has expended tens of millions of dollars in litigation
18 expense and has dragged out the trial in the Bridges Action as long as possible. After a short
19 recess, the trial is scheduled to resume on Wednesday, March 3, 2010 and is expected to last
20 through the end of April 2010. In the Bridges Action, Briarwood seeks to recover over \$100
21 million from the Lennar defendants on a variety of claims, as well as punitive damages which
22 may well be hundreds of millions of dollars.

23 30. In the meantime, the toll of the Lennar Litigation on Briarwood and Marsch has
24 been severe. Briarwood and Marsch have experienced significant cash flow problems simply
25 funding the Bridges Action, particularly when combined with Lennar’s wrongfully causing HCC
26 to withhold millions of dollars due immediately to Briarwood under the HCC Operating
27 Agreement and the fact that Briarwood and Marsch continue to be subjected to various other
28 tactical lawsuits brought by Lennar. Ultimately, Briarwood and Marsch were forced to

1 commence their respective chapter 11 cases to protect against the heavy demands of the
2 peripheral Lennar Litigation, which were brought for the purpose of increasing leverage over
3 Briarwood and Marsch and diverting those parties' focus and resources from the Bridges Action,
4 and due to financial pressures caused by Lennar's action which have resulted in creditors of
5 Briarwood and Marsch starting to foreclose on the assets of Briarwood and Marsch.

6 **III. The Florida Action**

7 31. The Florida Action represents one of Lennar's most recent attempts to increase the
8 litigation burden on Briarwood and Marsch. In the Fourth Amended Complaint, Lennar Corp and
9 Lennar Homes assert a variety of claims against Briarwood claiming that Briarwood and Marsch
10 conspired with Minkow and FDI to defame, extort and otherwise interfere with Lennar's
11 business. A true and correct copy of Plaintiffs' Fourth Amended Complaint without exhibits (the
12 "FAC"), filed by the plaintiffs in that action, Lennar Corp and Lennar Homes (the "Florida
13 Plaintiffs"), on February 17, 2010, is attached hereto as **Exhibit A**.

14 32. The Florida Action is an elaborate smokescreen which is clearly aimed at exerting
15 leverage over Briarwood and Marsch with respect to the Bridges Action -- the outcome of which
16 could have a potentially devastating effect on Lennar, a publicly-traded company. Lennar has
17 demonstrated over the past several years that it has a seemingly bottomless litigation fund, which
18 it has chosen to use in the Lennar Litigation rather than paying Briarwood the funds to which it is
19 entitled.

20 33. During the course of the Florida Action, Lennar has pursued discovery at a furious
21 pace, and has attempted to increase the burden and expense of that litigation on Briarwood and
22 the other non-debtor defendants at every turn. In fact, Briarwood's ongoing and increasing
23 monthly legal expenses in the Florida Action was one of the precipitating factors for
24 commencement of the Bankruptcy Case.

25 34. That the Florida Action is truly an action aimed at gaining leverage over
26 Briarwood and Marsch is demonstrated by the manner in which the claims are asserted in the
27 FAC. Throughout the FAC, the Florida Plaintiffs assert the "Marsch Parties" (defined in the
28 preamble to the FAC as Marsch and Briarwood "collectively") engaged in various acts as part of

1 a scheme and conspiracy to defame, extort and otherwise harm the reputation and business of
 2 Lennar. *See, e.g.*, FAC, ¶¶ 4-14, 16, 19, 20-22, 24, 26, 27, 29-31, 34-36. The Florida Plaintiffs
 3 thus refer to the Debtor and Marsch interchangeably, as one collective actor, ascribing the acts
 4 and liability of one to the other.

5 35. The Florida Plaintiffs also allege at numerous points throughout the FAC that the
 6 actions of Minkow and FDI (the “Minkow Parties”) were done as agents, on behalf of, or
 7 otherwise with the “knowledge, consent and ratification” of the “Marsch Parties,” and that the
 8 “Marsch Parties,” including the Debtor, were using the Minkow Parties as an instrument to
 9 further their “extortionate, defamatory, and fraudulent objectives and tactics.” *See, e.g.*, FAC, ¶¶
 10 14, 22, 24, 26, 27, 29-31, 33, 34, 46. In fact, the Florida Plaintiffs specifically allege that *each* of
 11 the defendants in the Florida Action:

12 acted as the agent, servant, representative, partner, joint-venturer,
 13 and/or employee of the other [d]efendants and, in doing the things
 14 hereinafter alleged, was acting within the scope of such agency or
 employment and with the knowledge, permission, and consent of
 each other [d]efendant.

15 *See* FAC ¶ 46. Thus, the Florida Plaintiffs make it clear in the FAC that they seek to impose
 16 liability on both Briarwood and Marsch for the allegedly wrongful actions and/or omissions of
 17 each of the other defendants, including Minkow and FDI.

18 36. An examination of each of the claims demonstrates that it is impractical, if not
 19 impossible, to proceed in the Florida Action without violating the rights of the Debtor:

20 a. Count I of the FAC asserts that Marsch and Minkow conspired with the
 21 Debtor and others to engage in illegal conduct as part of an “Enterprise” to further the illegal
 22 conduct. *See* FAC, ¶¶ 52, 52(a), 54. Count I contains specific allegations of acts undertaken by
 23 the Debtor as part of the Enterprise, and concludes by asserting that the Debtor is “vicariously
 24 liable” for the conduct of Marsch “and for any and all damages proximately caused thereby.” *See*
 25 FAC, ¶ 66. In essence, the FAC makes clear that the Florida Plaintiffs seek to impose liability on
 26 the Debtor, as member of the Enterprise and otherwise, for any liability of the other persons
 27 identified therein. *See* FAC ¶¶ 46, 65, 66.
 28

b. Count II of the FAC asserts the “Marsch Parties,” including the Debtor, interfered with the Florida Plaintiffs’ contractual relations with a third party. *See* FAC ¶¶ 68-70. The allegations of Count II fail to distinguish between the acts of Marsch and the acts of the Debtor, and seek to impose liability on both for each other’s actions alleged in Count II of the FAC. *See* FAC ¶¶ 46, 70.

c. Count III of the FAC asserts the “Marsch Parties,” including the Debtor, made false and defamatory statements that injured the business reputation of the Florida Plaintiffs. *See, e.g.,* FAC ¶ 84. The allegations of Count III fail to distinguish between the acts of Marsch and the acts of the Debtor, and seek to impose liability on both for each other’s actions and the actions of the Minkow Parties alleged in Count III of the FAC. *See* FAC ¶¶ 46, 85, 86.

d. Count IV of the FAC asserts that the “Marsch Parties,” including the Debtor, through their own alleged actions and the alleged actions of the Minkow Parties, engaged in unfair, deceptive and unconscionable acts or practices. *See* FAC ¶¶ 88-95. The allegations of Count IV fail to distinguish between the acts of Marsch and the acts of the Debtor, and seek to impose liability on both for each other’s actions and the actions of the Minkow Parties alleged in Count IV of the FAC. *See* FAC ¶¶ 46, 94.

e. Count V of the FAC asserts that the “Marsch Parties,” including the Debtor, engaged in a conspiracy with each other and the Minkow Parties to extort and defame Lennar. *See* FAC ¶¶ 97-99. In particular, Count V alleges that the Debtor “worked in concert” with the other defendants as part of an “extortion scheme.” *Id.* The allegations of Count V fail to distinguish between the acts of Marsch and the acts of the Debtor, and seek to impose liability on both for each other’s actions and the actions of the Minkow Parties alleged in Count V of the FAC. *See* FAC ¶ 46, 99.

f. Finally, the “Prayer for Relief” does not distinguish between either the causes of action or the parties against whom relief is sought, but simply requests the Florida court impose liability in an amount to be proven at trial. *See* FAC, page 34.

37. A review of the FAC demonstrates that the Debtor cannot be extracted from the Florida Action logistically or otherwise. The Debtor is implicated interchangeably with Marsch

1 and the Minkow Parties and the purported actions of the Debtor are ascribed to each, and vice-
2 versa. Because of the nature of the claims asserted in the Florida Action, it is not possible to draw
3 a meaningful distinction between claims asserted against the Debtor and any other claims. In
4 fact, the claims are inextricably intertwined both in the alleged factual basis which purportedly
5 supports the claims and the liability sought to be ascribed to the individual defendants,
6 particularly in light of the alleged “schemes” and “conspiracy” asserted in the FAC.

7 38. Thus, it is clear that the claims asserted by the Florida Plaintiffs in the Florida
8 Action are each inextricably intertwined both in fact and law, and that proceeding on any of the
9 claims will have a direct effect on the Debtor’s estate. In particular, the Florida Plaintiffs seek to
10 impose liability on the Debtor for any liability of every other defendant. By proceeding against
11 the other defendants *in any respect*, the Florida Plaintiffs would in effect be attempting to
12 liquidate a claim against the Debtor. Moreover, given the alleged common actions and identities
13 of the Debtor and the other defendants in the Florida Action, the Debtor would suffer severe
14 prejudice even if it were not actively involved in any litigation in the Florida Action.

15 39. On and after the Petition Date, however, the Florida Plaintiffs have made it clear
16 that they intend to proceed with the Florida Action despite the Debtor’s Bankruptcy Case. In the
17 “Lennar Plaintiffs’ Response to Defendant Briarwood Capital, LLC’s Suggestion of Bankruptcy”
18 (the “Lennar Response”), filed in the Florida State Court on 25, 2010, the Florida Plaintiffs take
19 the position that the automatic stay arising under 11 U.S.C. § 362(a) in the Debtor’s Bankruptcy
20 Case does not operate to stay the Florida Action in its entirety. Instead, the Florida Plaintiffs state
21 that “section 362 applies only to claims against the debtor; it does not operate to stay claims
22 against non-debtor entities.” A true and correct copy of the Lennar Response is attached hereto as
23 **Exhibit B**. On February 27, 2010, counsel for the Florida Plaintiffs confirmed by e-mail to
24 counsel for the Debtor that the Florida Plaintiffs intend to move forward with the Florida Action
25 as against the Minkow Parties.

26 40. In addition, counsel for the Florida Plaintiffs has threatened, after the Petition
27 Date, to seek sanctions against one or more of the non-Debtor defendants and/or witnesses in that
28 proceeding if they fail to participate and move forward with discovery, despite the clear prejudice

1 to the Debtor of pursuing claims against such parties in the Debtor's absence -- claims for which
 2 the Florida Plaintiffs assert the Debtor (and Marsch) is not only implicated, but should be held
 3 liable.

4 41. Briarwood's claims in the Bridges Action are by far the most significant asset of
 5 the Debtor's and Marsch's bankruptcy estates, and successful reorganization in both cases hinges
 6 on the unfettered ability to pursue those claims to judgment. This adversary proceeding is filed to
 7 obtain from the Bankruptcy Court a determination that the automatic stay arising by virtue of the
 8 Debtor's chapter 11 case stays the entirety of the Florida Action, because the claims asserted in
 9 that Action are not, and cannot be, severed so as to not affect the Debtor or its estate. In the
 10 alternative, Plaintiff requests the Court resort to its equitable powers under the Bankruptcy Code
 11 and otherwise to grant injunctive relief staying the Florida Action until further order of the
 12 Bankruptcy Court.

13 **FIRST CLAIM FOR RELIEF**

14 **(Declaratory Relief)**

15 42. Plaintiff incorporates by reference paragraphs 1 through 41 above as if set forth in
 16 full herein.

17 43. There is a present controversy between the Debtor and the Florida Plaintiffs
 18 regarding whether the continuation of the Florida Action constitutes a violation of the automatic
 19 stay arising under 11 U.S.C. § 362(a).

20 44. Plaintiff desires a judicial declaration that:

21 a. the continuation of the Florida Action constitutes the continuation of a
 22 judicial, administrative, or other action or proceeding against the Debtor that was brought before
 23 the commencement of the Bankruptcy Case, in violation of 11 U.S.C. § 362(a)(1); and

24 b. the continuation of the Florida Action constitutes the continuation of a
 25 judicial, administrative, or other action or proceeding to recover a claim against the Debtor that
 26 was brought before the commencement of the Bankruptcy Case, in violation of 11 U.S.C. §
 27 362(a)(1);

28 45. A judicial declaration is necessary and appropriate at this time under the

1 circumstances in order to ensure the parties to the Florida Action are clear on the effect the
 2 automatic stay in the Debtor's case has on the Florida Action.

3 **SECOND CLAIM FOR RELIEF**

4 **(Injunctive Relief - 11 U.S.C. § 105; 28 U.S.C. § 1334)**

5 46. Plaintiff incorporates by reference paragraphs 1 through 45 above as if set forth in
 6 full herein.

7 47. Even if the stay arising under 11 U.S.C. § 362(a) does not automatically stay the
 8 Florida Action, in its entirety, injunctive relief should be granted by the Bankruptcy Court to stay
 9 the Florida Action.

10 48. The Florida Plaintiffs assert in the FAC that there exists such identity between the
 11 Debtor and the other defendants that any liability imposed on such other defendants would result
 12 in liability to the Debtor. The claims against such defendants, as asserted in the FAC, are
 13 inextricably intertwined with the claims asserted, and the liability sought to be imposed, against
 14 the Debtor. In fact, in seeking relief in the FAC, the Florida Plaintiffs fail in large part to
 15 distinguish between acts taken by the four defendants, including the Debtor, and seek relief
 16 against all such parties, without regard to any separate identity of the defendant. Thus, failure to
 17 enjoin the Florida Action in its entirety would adversely affect the Debtor's estate, and would
 18 adversely and detrimentally influence and pressure the Debtor through the Florida Plaintiffs'
 19 pursuit of claims against the other defendants.

20 49. The relevant circumstances described above are sufficient to justify the
 21 Bankruptcy Court granting immediate injunctive relief to stay the Florida Action as against all
 22 defendants, until further order of the Bankruptcy Court, pursuant to the Bankruptcy Court's
 23 express authority under 11 U.S.C. § 105 and the Bankruptcy Court's inherent authority under 28
 24 U.S.C. § 1334.

25 WHEREFORE, plaintiff requests relief as follows:

- 26 1. A judicial declaration that:
 - 27 a. the continuation of the Florida Action constitutes the continuation of a
 - 28 judicial, administrative, or other action or proceeding against the Debtor that was brought before

1 the commencement of the Bankruptcy Case, in violation of 11 U.S.C. § 362(a)(1); and

2 b. the continuation of the Florida Action constitutes the continuation of a
3 judicial, administrative, or other action or proceeding to recover a claim against the Debtor that
4 was brought before the commencement of the Bankruptcy Case, in violation of 11 U.S.C. §
5 362(a)(1);

6 2. A temporary restraining order staying all proceedings in the Florida Action
7 pending a hearing on a preliminary and/or permanent injunction;

8 3. A preliminary and permanent injunction staying all proceedings in the Florida
9 Action, pending further order of the Bankruptcy Court, pursuant to the Bankruptcy Court's
10 express authority under 11 U.S.C. § 105 and the Bankruptcy Court's inherent authority under 28
11 U.S.C. § 1334;

12 4. Attorneys' fees and costs of suit to the extent recoverable under applicable law;
13 and

14 5. Any such other and further relief as may be just and proper.

15 DATED: February 28, 2010

16 /s/ Jeffry A. Davis

17 Jeffry A. Davis

18 Joseph R. Dunn

19 **MINTZ LEVIN COHN FERRIS GLOVSKY**
AND POPEO P.C.

Proposed Attorneys for
Briarwood Capital, LLC

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